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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 130402317-3966-02]

RIN 0648-XC611

Atlantic Highly Migratory Species; 2014 Atlantic Shark Commercial Fishing Seasons

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; fishing season notification.

SUMMARY: This final rule establishes opening dates and adjusts quotas for the 2014 fishing season for the Atlantic commercial shark fisheries. The quota adjustments are based on over- and/or underharvests experienced during 2013 and previous fishing seasons. In addition, NMFS establishes season opening dates based on adaptive management measures to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. These actions could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

DATES: This rule is effective on January 1, 2014. The 2014 Atlantic commercial shark fishing season opening dates and quotas are provided in Table 1 under SUPPLEMENTARY INFORMATION.

ADDRESSES: Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Guý DuBeck or Karyl Brewster-Geisz at 301-427-8503.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established, among other things, commercial quotas for species and management groups, accounting measures for under- and overharvests for the shark fisheries, and adaptive management measures such as flexible opening dates for the fishing season and inseason adjustments to shark trip limits, which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

On August 23, 2013 (78 FR 52487), NMFS published a rule proposing the 2014 opening dates for the Atlantic commercial shark fisheries and quotas based on shark landings information as of July 16, 2013. The proposed rule also considered using adaptive management measures such as flexible opening dates for the fishing seasons (§ 635.27 (b)(3)) and inseason adjustments to shark trip limits (§ 635.24 (a)(8)) to provide flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. The August 2013 proposed rule contains details regarding the proposal and how the quotas were calculated that are not repeated here. The comment period on the proposed rule ended on

September 23, 2013.

During the comment period, NMFS received more than 500 written and oral comments on the proposed rule. Those comments, along with the Agency's responses, are summarized below. As further detailed in the Response to Comments section, after considering all the comments, NMFS is opening the fishing seasons for all shark management groups except the aggregated LCS and hammerhead shark management groups in the Atlantic region on January 1, 2014, as proposed in the August 23, 2013, proposed rule. The aggregated LCS and hammerhead shark management groups in the Atlantic region will open on June 1, 2014, which is a change from the proposed rule. Also, some of the quotas have changed since the proposed rule based on updated landings information as of October 18, 2013.

This final rule serves as notification of the 2014 opening dates of the Atlantic commercial shark fisheries and 2014 quotas, based on shark landings updates as of October 18, 2013, pursuant to § 635.27(b)(1)(i) through (b)(1)(x). This action does not change the annual base commercial quotas established under Amendments 2, 3, and 5a to the 2006 Consolidated HMS FMP for any shark management group. Any such changes would be performed through a separate action. Rather, this action adjusts the annual base commercial quotas based on over- and/or underharvests that occurred in 2013 and previous fishing seasons, consistent with existing regulations.

Response to Comments

NMFS received comments from more than 500 fishermen, dealers, and other interested parties on the proposed rule. All written comments can be found at <http://www.regulations.gov/> and by searching for RIN 0648-XC611.

A. LCS Management Group Comments

Comment 1: NMFS received more than 350 comments regarding the proposed opening date for the aggregated LCS and hammerhead management groups in the Atlantic region. Some fishermen from the southern portion of the Atlantic region requested an opening date from May 1 through May 31. These commenters stated that NMFS should delay the opening date to help protect the pupping of sharks off the coast of Florida. These commenters generally would prefer the opportunity to fish for sharks in October through December because they participate in other fisheries at the beginning of the year, and prefer to save the shark quota for later in the year when there are no other fisheries open in Florida. Other constituents requested that the proposed aggregated LCS opening date in the Atlantic region be changed to July 1 to reduce fishing pressure on the lemon shark aggregation in southern Florida. These commenters stated that: NMFS should protect this area from December through April due to lemon shark pupping; NMFS has not fully considered all of the information when choosing the opening dates since the proposed opening date would have negative effects on the lemon shark aggregation; tagging data and scuba diving observations suggested the aggregated lemon shark population is experiencing a decline since regulations implemented to protect sandbar sharks have increased fishing pressure on this species and other sharks; commercial fishermen targeted the lemon shark aggregation in 2013; Enric Cortes, a NOAA scientist, stated in a publication that lemon sharks are the most vulnerable of all LCS species, based on several standard criteria; and NMFS needs to consider the socioeconomic benefit of the shark aggregation to eco-tourists beyond the benefits to commercial fishermen only. The Atlantic States Marine Fisheries Commission (ASMFC) expressed concerns that the proposed January 1 opening date could result in closing

the fishery earlier in the year due to the quota linkages and would not provide equitable fishing opportunities for fishermen located in the northern portion of the Atlantic region. The Commonwealth of Virginia also expressed their concerns about the proposed opening date of January 1 and the potential impacts on the mid-Atlantic commercial shark fishermen should the quotas be reached prematurely in the year.

Response: NMFS evaluates a range of criteria (§ 635.27(b)(3)) before choosing an opening date. These include: (1) the available annual quotas for the current fishing season for the different species/management groups based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons; (2) estimated season length based on available quota(s) and average weekly catch rates of different species and/or management group from the previous years; (3) length of the season for the different species and/or management group in the previous years and whether fishermen were able to participate in the fishery in those years; (4) variations in seasonal distribution, abundance, or migratory patterns of the different species/management groups based on scientific and fishery information; (5) effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas; (6) effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or, (7) effects of a delayed opening with regard to fishing opportunities in other fisheries. After evaluating the opening fishing season criteria and reviewing the public comments, NMFS has determined that changing the opening date to June 1 would promote equitable fishing opportunities in the Atlantic region. This date should allow fishermen in the northern portion of the Atlantic region the opportunity to fish starting in June while still

providing fishing opportunities for fishermen in the southern portion of the Atlantic region later in the year. NMFS responds to the concerns as articulated in Comment 1 in further detail below.

Regarding the comments from some fishermen from the southern portion of the Atlantic region—who preferred a delayed opening for the Atlantic aggregated LCS and hammerhead shark fisheries since that would likely avoid the shark pupping season and ensure potential fishing opportunities later in the year (October through December) based on fishing rates from 2013—NMFS agrees that a delay would provide potential fishing opportunities later in the year.

Many commenters indicated that NMFS should delay the opening to protect shark pupping. While delaying the fishing season might overlap with the lemon shark pupping off of southern Florida—because most sharks pup in shallow waters (which are found in state waters, not Federal waters) and the potential nursery area mentioned by commenters is found in Florida state waters (which are already closed to the two primary commercial shark gears - bottom longline and gillnet)—the opening dates for Federal shark fishing seasons has little impact on shark pupping seasons in most areas. NMFS has worked and will continue to work with Atlantic coastal states and Regional Fishery Management Councils and Interstate Marine Fisheries Commissions to protect shark nursery and pupping areas.

Regarding the comment that lemon sharks were experiencing overfishing in a certain area off of Florida, NMFS cannot determine if the lemon shark population has declined in recent years based on the study and data submitted in the public comments and is not aware of a complete stock assessment showing a decline in the stock. The data provided by commenters did not include information on a number of relevant biological (e.g., water temperature, water quality due to rain run-off, migration patterns) and other (e.g., number of sharks tagged each

year, the battery life of tags, location of all of the receivers) factors. These factors could have contributed to the decline in lemon sharks that was observed in the data and by scuba divers in the south Florida area. NMFS cannot make a determination using the data provided.

Nonetheless, NMFS reviewed current data regarding lemon sharks to examine the concerns raised in the comments. Based on 2013 dealer data, lemon sharks were not targeted in or around Florida waters by commercial fishermen. Dealers reported that Florida-based fishermen landed approximately 3.5 mt dw (7,619 lb dw) of lemon sharks in 2013. The total landings of lemon sharks reported landed in 2013 accounted for approximately 4 percent of the total landings of aggregated LCS in the Atlantic region, which is comparable to past fishing years.

Regarding the comment that Dr. Enric Cortés published a paper indicating lemon sharks were declining: Dr. Cortés and colleagues gave a presentation at the 2008 annual meeting of the American Elasmobranch Society entitled “Productivity and Susceptibility Analysis of Atlantic sharks” where lemon sharks had the highest vulnerability score (a combination of stock productivity and susceptibility to fisheries) of all Atlantic shark species included in the analysis. However, it was noted that the analysis was preliminary and that the high score for the lemon shark was mostly driven by a very high susceptibility score (the product of four components: availability, encounterability, selectivity, and post-capture mortality), which in turn was a result of assuming the maximum value of 100% for the encounterability, selectivity, and post-capture mortality components. The study was never published and should thus be interpreted with caution and not considered final.

Some commenters felt that NMFS should consider the benefits of eco-tourism when proposing shark fishing season opening dates. While shark aggregations may benefit eco-

tourism, this factor is not one of the specific criteria NMFS uses to establish opening dates.

Rather, NMFS establishes commercial fishing quotas based on the best available science in order to rebuild overfished fisheries, prevent overfishing, and achieve optimum yield. NMFS may consider ecotourism benefits when setting fishing season opening dates in the future.

Regarding the requests by ASMFC and the Commonwealth of Virginia to delay the opening of the aggregated LCS and hammerhead shark management groups in the Atlantic region to allow equitable fishing opportunities given the migration of sharks along the coast throughout the year, NMFS agrees that opening the fisheries later in the year could provide more equitable fishing opportunities without negative ecological impacts on shark stocks.

Comment 2: Regarding the proposed opening date for the blacktip shark, aggregated LCS, and hammerhead shark management groups in the Gulf of Mexico region, one commenter requested an opening date of March 5 to coincide with the religious holiday of Lent and a closure for the fishery on July 1 before the State of Louisiana re-opens their state-waters for the these sharks. Another commenter requested opening dates ranging from May 15 through May 31 each year to protect the pupping of various LCS stocks.

Response: Taking into consideration the opening criteria (§ 635.27(b)(3)), NMFS has determined that keeping the proposed opening date of January 1 for the blacktip shark, aggregated LCS, and hammerhead shark management groups in the Gulf of Mexico region promotes equitable fishing opportunities throughout this region. NMFS considered the length of the season for the different species and/or management groups in 2012 and 2013, and whether fishermen were able to participate in the fishery in those years (§ 635.27(b)(3)(iii)). Since the State of Louisiana has a state-water closure from April 1 through June 30 (pupping season) and

opens and closes with the Federal shark fisheries, opening the season in March might not give all fishermen in the region an equitable opportunity to harvest the quota. NMFS agrees that management measures to protect nursery areas of the various LCS stocks are important, but does not believe that closing the entire region until May is warranted at this time. Sharks are broadly distributed as adults, but have been found to utilize specific estuaries as pupping and nursery areas in state-waters during pupping seasons and throughout their neonate (newborn) and young-of-the-year life stages. As described above, the State of Louisiana closes state-waters for this reason and the State of Florida has already closed its waters to the two primary commercial shark gears. Given the limited degree of nursery and pupping areas in Federal waters, NMFS will continue to work with Gulf coastal states and Regional Fishery Management Councils and Interstate Marine Fisheries Commissions. In regard to closing on July 1, under §635.28 (b)(2), NMFS closes each management group or linked management groups when landings have reached or are projected to reach 80 percent of the quota. NMFS does not decide upon the closure date before the fishery opens.

Comment 3: NMFS received comments from the ASMFC in opposition of more restrictive retention limits throughout the season to address unequal quota distribution stating that fishermen use non-sandbar LCS to supplement the total trip landings; therefore, any adjustment to the trip limit could reduce their economic success.

Response: As described in the proposed rule for this action, NMFS plans to implement the adaptive management measures that were finalized in the 2011 shark season rule (75 FR 76302; December 8, 2010) to adjust, via inseason actions, the retention limit for non-sandbar LCS. Specifically, if the quota is being harvested quickly and NMFS calculates that the

fishermen in the northern portion of the region have not yet had an opportunity to fish for aggregated LCS and hammerhead sharks because the sharks have not migrated to that area, NMFS may reduce the trip limit to slow fishing (e.g., change the trip limit from 36 sharks to 15 sharks or even 0 sharks) and then increase the limit again when NMFS estimates that the sharks have migrated north. Similarly, under the opening date in this final rule, if the quota is being landed quickly and NMFS calculates the fishermen in the southern portion of the region have not yet had an opportunity to fish because the sharks remain north, NMFS may reduce the trip limit to slow fishing until the sharks migrate further south. This process should ensure equitable fishing opportunities for all fishermen along the Atlantic coast while accommodating fishermen's requests from both the southern and northern portions of the Atlantic region. NMFS did not need to use these measures in 2013, when the fishery opened on January 1, but may in the future depending on catch rates. Given real-time quota monitoring, along with the inseason trip limit adjustment, NMFS has flexibility to further opportunities for all fishermen in all regions, to the extent practicable, while also ensuring that quotas are not exceeded.

B. SCS Management Group Comments

Comment 4: NMFS received comments on the proposed opening date for the non-blacknose SCS and blacknose shark management groups. Some commenters supported the January 1 opening date, while ASMFC expressed concerns with the January 1 opening date as it could impact fishermen in the northern portion of the Atlantic region and cause the entire fishery to close earlier in the year due to the blacknose shark quota linkage.

Response: NMFS has determined that opening the SCS fishery on January 1, 2014, promotes equitable fishing opportunities throughout the Atlantic and Gulf of Mexico regions by

allowing fishermen throughout the regions an opportunity to fish on non-blacknose SCS. NMFS made this decision after considering the opening criteria, particularly the length of the season for the different species and/or management groups in 2012 and 2013, and whether fishermen were able to participate in the fishery in those years (§ 635.27(b)(3)(iii)). The non-blacknose SCS and blacknose shark management groups have remained open all year in previous fishing seasons, except for in 2010 and 2013. In 2010, these fisheries closed on November 2 (75 FR 67251), and in 2013, the management groups in the Atlantic region closed on September 30, 2013 (78 FR 59878). Both times were in the first year of new management measures of Amendment 3 and 5a to the 2006 Consolidated HMS FMP and both times were in the later part of the year after all fishermen throughout the Atlantic had had an opportunity to fish for SCS. NMFS linked these quotas due to concerns regarding the incidental harvest of blacknose sharks, which is overfished, while fishermen were targeting non-blacknose SCS. During the Amendment 3 to the 2006 Consolidated HMS FMP rulemaking process, fishermen indicated that they could avoid catching blacknose sharks when fishing for non-blacknose sharks. NMFS agreed with that comment. As such, as long as fishermen avoid catching blacknose sharks, which NMFS has encouraged, the non-blacknose shark fishery should remain open. For more information on these comments and NMFS's response, see the Amendment 3 to the 2006 Consolidated HMS FMP final rule (75 FR 30484; June 1, 2010).

Comment 5: NMFS received several comments supporting the proposal to split the blacknose shark overharvest over 5 years.

Response: Based on public comment, NMFS has decided to spread the overharvest over 5 years to reduce the impacts to commercial fishermen due to the blacknose-SCS quota linkage. In

the proposed rule, NMFS explained that late dealer reports indicated the 2012 blacknose shark quota was exceeded by 18 percent, or 3.5 mt dw, after the final rule establishing quotas for the 2013 shark season was published (77 FR 75896; December 26, 2012). Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318; July 3, 2013), among other things, established Atlantic and Gulf of Mexico regional quotas for blacknose sharks, and in this final rule, NMFS split the total overharvest between the Atlantic and Gulf of Mexico regions based on the percent of landings of blacknose sharks reported in each region and spread the overharvest over 5 years. Therefore, NMFS will adjust the annual Atlantic non-blacknose shark management group by 0.5 mt dw to 17.5 mt dw, and the annual Gulf of Mexico blacknose shark management group by 0.2 mt dw to 1.8 mt dw, for the next 5 years (e.g., 2014-2018, inclusive). If the adjusted quotas continue to be overharvested, the overharvested amount will be further reduced from the adjusted annual quotas in future fishing seasons.

C. General Comments

Comment 6: Commenters supported the conservation aspects of this rule (e.g., monitoring quotas, restricting fishing, etc.).

Response: Management of the Atlantic shark fisheries is based on the best available science to rebuild or maintain overfished or maintain shark stocks and prevent overfishing. The 2014 shark season rule establishes commercial quotas based on over- and underharvest in 2013 and previous fishing seasons, and sets the opening dates for each management group. This rulemaking implements previously adopted measures with adjustments, as specified in the 2006 Consolidated HMS FMP and its amendments and the Environmental Assessment (EA) that accompanied the 2011 shark quota specifications rule (75 FR 76302; December 8, 2010).

Comment 7: NMFS received comments to implement more regulations in Federal waters to protect lemon sharks and stop all shark fishing.

Response: This comment is outside the scope of this rulemaking. The purpose of this rulemaking is to adjust quotas based on over- and underharvests from the previous year and opening dates for the 2014 shark season. Management of the Atlantic shark fisheries is based on the best available science to maintain or rebuild overfished shark stocks. The final rule does not reanalyze the overall management measures for sharks, which were analyzed in Amendments 2, 3, and 5a to the 2006 Consolidated HMS FMP, nor does this rule review the stock status of lemon sharks and consider measures for lemon sharks to implement rebuilding or prevent overfishing, if needed. NMFS is considering shark management measures, including those to rebuild shark stocks or prevent overfishing, in other upcoming rulemakings such as Amendments 5b and 6 to the 2006 Consolidated HMS FMP. As stated above, NMFS needs more information regarding lemon shark status before considering management measures that are specifically designed to either prevent overfishing and/or rebuild that stock.

Comment 8: NMFS received comments about the underharvest of sandbar shark quota. These constituents would prefer NMFS to allow commercial landings of sandbar sharks from outside of the shark research fishery.

Response: This comment is outside the scope of this rulemaking. In Amendment 5a to the 2006 Consolidated HMS FMP, NMFS stated that sandbar sharks are still overfished, but overfishing is no longer occurring. Because of the positive results from the stock assessment, NMFS decided to maintain the current sandbar shark rebuilding plan, including regulations prohibiting possession of sandbar sharks in commercial and recreational shark fisheries. NMFS

may re-analyze the sandbar shark regulations as part of the upcoming Amendment 6 to the 2006 Consolidated HMS FMP or could decide to review this issue in a separate rulemaking.

Comment 9: NMFS received several comments regarding quota linkage and blacknose shark trip limits. Commenters requested that NMFS remove the non-blacknose SCS and blacknose shark quota linkage, implement no more linkages between shark management groups in any future actions, and establish a trip limit for blacknose sharks.

Response: This comment is outside the scope of this rulemaking. As described above, quota linkages are designed to prevent incidental mortality of one species from occurring in another shark fishery after its management group has closed. Also, as described above, in the case of the blacknose and non-blacknose SCS quota linkage, NMFS finalized the linkage as part of Amendment 3 to the 2006 Consolidated HMS FMP specifically because fishermen indicated, and NMFS agreed, that fishermen could target non-blacknose SCS without catching blacknose sharks. In Amendment 5a to the 2006 Consolidated HMS FMP, NMFS split the blacknose and non-blacknose quotas into two regions. In each region, the blacknose shark quota is linked to the non-blacknose SCS quota. If blacknose shark landings in one region trigger a quota closure, the non-blacknose SCS management group in that region would close as well. The quota linkage prevents blacknose shark mortality in the directed non-blacknose SCS fishery from occurring after the blacknose shark quota has been filled. Preventing this mortality is an important part of the rebuilding plan for blacknose sharks. The quota linkage between blacknose sharks and non-blacknose SCS management groups, which has been in effect since 2010, has only caused the entire SCS fishery to close twice. Both times were in the first year of new management measures of Amendment 3 and 5a to the 2006 Consolidated HMS FMP and both times were in

the later part of the year after all fishermen throughout the Atlantic had had an opportunity to fish for SCS. In Amendment 5a to the 2006 Consolidated HMS FMP, NMFS re-examined the quota linkage issue and determined that quota linkages are still needed and are a useful tool in rebuilding overfished stocks. If needed, in future rulemaking actions, NMFS could decide to re-evaluate the benefit of linkages and non-linkages for the management groups and fishery.

Comment 10: NMFS received a request to replace “underfishing” with the concept of the optimum yield as per National Standard 1 to protect the fishing communities and businesses.

Response: This comment is outside the scope of this rulemaking. As part of all rulemakings, NMFS analyzes the consistency with the National Standards and determined that this final rule meets all of the National Standards and other legal requirements. This rulemaking is consistent with National Standard 1 because it implements adjustments to mortality levels based on over- and underharvest, which is consistent with the stock assessments. The shark management group quotas allow fishermen to harvest optimum yield for the shark management groups and allows for rebuilding and preventing overfishing. As an example, this rule reduces the Gulf of Mexico aggregated LCS, blacknose shark and porbeagle shark quotas due to previous overharvests to prevent overfishing, while also providing underharvest opportunities to harvest the healthy Gulf of Mexico blacktip shark and non-blacknose SCS stocks.

Changes From the Proposed Rule

NMFS made 2 types of changes to the proposed rule as described below.

1. NMFS changed the final Gulf of Mexico blacktip shark (274.3 mt dw), Gulf of Mexico aggregated LCS (151.2 mt dw), and porbeagle shark (1.2 mt dw) quotas based on updated landings through October 18, 2013. In the proposed rule, which was based on data

available through July 16, 2013, the 2014 adjusted annual quota for Gulf of Mexico blacktip shark was proposed to be 281.9 mt dw (621,416 lb dw). Based on updated landings data through October 18, 2013, the Gulf of Mexico blacktip shark management group was underharvested by 17.7 mt dw. Therefore, the 2014 adjusted annual quota for Gulf of Mexico blacktip shark is 274.3 mt dw (604,626 lb dw) (256.6 mt dw annual base quota + 17.7 mt dw 2013 underharvest = 274.3 mt dw 2014 adjusted annual quota). The Gulf of Mexico aggregated LCS management group was overharvested by 6.2 mt dw based on landings data through October 18, 2013. Therefore, the 2014 adjusted annual quota for Gulf of Mexico aggregated LCS is 151.2 mt dw (333,828 lb dw) (157.5 mt dw annual base quota – 6.2 mt dw 2013 overharvest = 151.2 mt dw 2014 adjusted annual quota). In the proposed rule, the 2014 adjusted annual quota for porbeagle sharks was proposed to be 1.3 mt dw (2,874 lb dw). Landings data through October 18, 2013, indicate 54 lb dw of landings during a closure. Therefore, the 2014 adjusted annual quota for porbeagle shark is 1.2 mt dw (2,820 lb dw) (1.7 mt dw annual base quota – 0.4 mt dw 2011 and 2012 overharvest – 54 lb dw 2013 landings during closure = 1.2 mt dw 2014 adjusted annual quota). Landings information beyond October 18, 2013, was not available while NMFS was writing this rule. This final rule used the most recent available information to allow NMFS to properly analyze the fishery and open the fishery as proposed on January 1, 2014. Any landings between October 18 and December 31, 2013, will be accounted for in the 2015 shark fisheries quotas, as appropriate.

2. NMFS changed the opening date that was proposed for the aggregated LCS and hammerhead shark management groups in the Atlantic region from January 1, 2014 to June 1, 2014. As noted above, NMFS changed the opening date after considering public comment in

order to promote more equitable fishing opportunities in the Atlantic region.

2014 Annual Quotas

This final rule adjusts the commercial quotas due to over- and/or underharvests in 2013 and previous fishing seasons, based on landings data through October 18, 2013. The 2014 annual quotas by species and species group are summarized in Table 1. All dealer reports that are received by NMFS after October 18, 2013, will be used to adjust the 2015 quotas, if necessary. A description of the quota calculations is provided in the proposed rule and is not repeated here. Any changes are described in the “Changes from the Proposed Rule” section.

Table 1. 2014 Annual Quotas and Opening Dates for the Atlantic Shark Fisheries. (All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise.)

Management Group	Region	2013 Annual Quota (A)	Preliminary 2013 Landings ¹ (B)	Adjustments (C)	2014 Base Annual Quota (D)	2014 Final Annual Quota (D+C)	Season Opening Dates
Blacktip Sharks ²	Gulf of Mexico	256.6 mt dw (565,700 lb dw)	238.9 mt dw (526,774 lb dw)	17.7 mt dw (38,926 lb dw)	256.6 mt dw (565,700 lb dw)	274.3 mt dw (604,626 lb dw)	January 1, 2014
Aggregated Large Coastal Sharks		157.5 mt dw (347,317 lb dw)	163.7 mt dw (360,806 lb dw)	-6.2 mt dw (-13,489 lb dw)	157.5 mt dw (347,317 lb dw)	151.2 mt dw (333,828 lb dw)	
Hammerhead Sharks		25.3 mt dw (55,722 lb dw)	10.5 mt dw (23,212 lb dw)	-	25.3 mt dw (55,722 lb dw)	25.3 mt dw (55,722 lb dw)	
Aggregated Large Coastal Sharks	Atlantic	168.9 mt dw (372,552 lb dw)	147.9 mt dw (325,996 lb dw)	-	168.9 mt dw (372,552 lb dw)	168.9 mt dw (372,552 lb dw)	June 1, 2014
Hammerhead Sharks		27.1 mt dw (59,736 lb dw)	13.4 mt dw (29,454 lb dw)	-	27.1 mt dw (59,736 lb dw)	27.1 mt dw (59,736 lb dw)	
Non-Sandbar LCS Research	No regional quotas	50.0 mt dw (110,230 lb dw)	10.9 mt dw (24,008 lb dw)	-	50.0 mt dw (110,230 lb dw)	50.0 mt dw (110,230 lb dw)	January 1, 2014
Sandbar Shark Research		116.6 mt dw (257,056 lb dw)	27.9 mt dw (61,525 lb dw)	-	116.6 mt dw (257,056 lb dw)	116.6 mt dw (257,056 lb dw)	
Non-Blacknose Small Coastal Sharks ²	Gulf of Mexico	135.7 mt dw (299,075 lb dw) ³	73.8 mt dw (162,613 lb dw)	22.8 mt dw (50,159 lb dw) ⁴	45.5 mt dw (100,317 lb dw)	68.3 mt dw (150,476 lb dw)	

	Atlantic	193.5 mt dw (426,570 lb dw) ³	101.7 mt dw (224,146 lb dw)	88.0 mt dw (194,111 lb dw) ⁴	176.1 mt dw (388,222 lb dw)	264.1 mt dw (582,333 lb dw)	
Blacknose Sharks	Gulf of Mexico	2.0 mt dw (4,513 lb dw)	0.7 mt dw (1,574 lb dw)	-0.2 mt dw (-437 lb dw) ⁵	2.0 mt dw (4,513 lb dw)	1.8 mt dw (4,076 lb dw)	
	Atlantic	18.0 mt dw (39,749 lb dw)	15.1 mt dw (33,276 lb dw)	-0.5 mt dw (-1,111 lb dw) ⁵	18.0 mt dw (39,749 lb dw)	17.5 mt dw (38,638 lb dw)	
Blue Sharks	No regional quotas	273.0 mt dw (601,856 lb dw)	4.4 mt dw (9,767 lb dw)	-	273.0 mt dw (601,856 lb dw)	273.0 mt dw (601,856 lb dw)	
Porbeagle Sharks		0 mt dw (0 lb dw)	< 1 mt dw (54 lb dw)	-0.5 ⁶ (adjustments from 2012 and 2013 overharvests)	1.7 mt dw (3,748 lb dw)	1.2 mt dw (2,820 lb dw)	
Pelagic Sharks Other Than Porbeagle or Blue		488 mt dw (1,075,856 lb dw)	86.6 mt dw (190,902 lb dw)	-	488.0 mt dw (1,075,856 lb dw)	488.0 mt dw (1,075,856 lb dw)	

¹ Landings are from January 1, 2013, through October 18, 2013, and are subject to change.

² Based on stock assessment results, these management groups are considered not overfished and overfishing is not occurring. Thus, NMFS may increase the following year's base annual quota by an equivalent amount of the underharvest up to 50 percent above the base annual quota.

³ Transfer of non-blacknose SCS quota from the Atlantic to the Gulf of Mexico region on September 2, 2013 (78 FR 54195).

⁴ This adjustment accounts for underharvest in 2013. While the total underharvest is 153.7 mt dw, NMFS may account for underharvest only up to 50 percent of the base annual quota or 110.8 mt dw (244,270 lb dw). Based on regional splits, the Atlantic region (79.5%) would receive 88.0 mt dw of the underharvest amount, while the Gulf of Mexico (20.5%) would receive 22.8 mt dw. Therefore, the Atlantic non-blacknose SCS adjusted quota would be 264.1 mt dw and the Gulf of Mexico non-blacknose SCS adjusted would be 68.3 mt dw for the 2014 fishing season.

⁵ This adjustment accounts for overharvest in 2012. After the final rule establishing the 2012 quotas published, late dealer reports indicated the blacknose shark quota was overharvested by 3.5 mt dw (7,742 lb dw). Since Amendment 5a to the 2006 Consolidated HMS FMP established regional quotas, NMFS decided to implement a 5-year adjustment of the overharvest amount by the percentage of landings in 2012. Thus, NMFS would reduce the Gulf of Mexico blacknose sharks by 0.2 mt dw (437 lb dw) and the Atlantic blacknose sharks by 0.5 mt dw (1,111 lb dw) for the next 5 years.

⁶ This adjustment accounts for overharvest in 2013 and previous fishing years. In 2013, NMFS did not open the porbeagle shark management group due to overharvest from 2011 and 2012 (2.1 mt dw; 4,622 lb dw). This overharvest amount exceeded the 2013 base annual quota by 0.4 mt dw (874 lb dw), therefore, 0.4 mt dw (874 lb dw) would be reduced from the 2014 base annual quota. In addition, there was < 0.1 mt dw (54 lb dw) of illegal landing of porbeagle sharks in 2013.

Fishing Season Notification for the 2014 Atlantic Commercial Shark Fishing Seasons

Based on the seven “Opening Fishing Season” criteria listed in § 635.27(b)(3), the 2014 Atlantic commercial shark fishing season for the sandbar shark, Gulf of Mexico blacktip shark, Gulf of Mexico aggregated LCS, Gulf of Mexico hammerhead shark, non-blacknose shark SCS, blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on January 1, 2014. The aggregated LCS and hammerhead shark management groups in the Atlantic region will open on June 1, 2014.

All of the shark management groups would remain open until December 31, 2014, or until NMFS determines that the fishing season landings for any shark management group has reached, or is projected to reach, 80 percent of the available quota. Additionally, NMFS has established non-linked and linked quotas; linked quotas are explicitly designed to concurrently close multiple shark management groups that are caught together to prevent incidental catch mortality from exceeding the total allowable catch. At this time, Gulf of Mexico blacktip and pelagic sharks have non-linked quotas and can close without affecting any other management groups. Consistent with § 635.28(b)(4), NMFS may close the Gulf of Mexico blacktip shark management group before landings reach, or are expected to reach, 80 percent of the quota. The linked quotas of the species and/or management groups are Atlantic hammerhead sharks and Atlantic aggregated LCS; Gulf of Mexico hammerhead sharks and Gulf of Mexico aggregated LCS; Atlantic blacknose and Atlantic non-blacknose SCS; and Gulf of Mexico blacknose and Gulf of Mexico non-blacknose SCS. NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species, shark management group including

any linked quotas, and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the Federal Register, that additional quota is available and the season is reopened, the fisheries for the shark species or management group are closed, even across fishing years. Before taking any inseason action, NMFS would consider the criteria listed at § 635.28(b)(4).

Classification

The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the MSA, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

In compliance with section 604 of the Regulatory Flexibility Act (RFA), NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule, which analyzed the adjustments to the Gulf of Mexico blacktip shark, non-blacknose SCS, blacknose shark, and porbeagle shark management group quotas based on over- and/or underharvests from the previous fishing season(s). The FRFA analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. The FRFA is below.

In compliance with section 604(a)(1) of the Regulatory Flexibility Act, the purpose of this final rulemaking is, consistent with the Magnuson-Stevens Act, to adjust the 2014 annual quotas for all Atlantic and Gulf of Mexico shark management groups based on over- and/or underharvests from the previous fishing year, where allowable. These adjustments are being implemented according to the regulations implemented for the 2006 Consolidated HMS FMP

and its amendments.

In this rulemaking, NMFS expects few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments. While there may be some direct negative economic impacts associated with the opening dates for fishermen in certain areas, there could also be positive effects for other fishermen in the region. The opening dates were chosen to allow for an equitable distribution of the available quotas among all fishermen across regions and states, to the extent practicable.

Section 604(a)(2) of the Regulatory Flexibility Act requires NMFS to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of NMFS' assessment of such issues, and a statement of any changes made as a result of the comments. The IRFA was done as part of the proposed rule for the 2014 Atlantic Commercial Shark Season Specifications. NMFS did not receive any comments specific to the IRFA. However, NMFS received comments related to the overall economic impacts of the proposed rule (see Comments 1, 2, 3, 4, 5, and 10 above). As described in the response to those comments relating to the season opening dates and consistent with § 635.27(b)(3), the opening date for the Gulf of Mexico blacktip shark, Gulf of Mexico aggregated LCS, Gulf of Mexico hammerhead shark, non-blacknose shark SCS, and blacknose shark management groups will be implemented as proposed, while the opening date for the aggregated LCS and hammerhead shark management groups in the Atlantic region will be delayed until June 1, 2014.

Section 604(a)(3) requires NMFS to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size

criteria for all major industry sectors in the United States, including fish harvesters. Prior to June 20, 2013, a business involved in fish harvesting was classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. In addition, SBA defined a small charter/party boat entity (NAICS code 713990, recreational industries) as one with average annual receipts of less than \$7.0 million. On June 20, 2013, SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398; June 20, 2013). The rule increased the size standard for Finfish Fishing from \$ 4.0 to 19.0 million, Shellfish Fishing from \$4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS does not believe that the new size standards affect analyses prepared for this action. The final rule would apply to the approximately 221 directed commercial shark permit holders (133 in the Atlantic and 88 in the Gulf of Mexico regions), 265 incidental commercial shark permit holders (162 in the Atlantic and 103 in the Gulf of Mexico regions), and 97 commercial shark dealers (65 in the Atlantic and 32 in the Gulf of Mexico regions) as of October 2013.

Section 604(a)(4) of the Regulatory Flexibility Act requires NMFS to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the actions in this final rule would result in additional reporting,

recordkeeping, or compliance requirements beyond those already analyzed in Amendments 2, 3, and 5a to the 2006 Consolidated HMS FMP.

Section 604(a)(5) of the Regulatory Flexibility Act requires NMFS to describe the steps taken to minimize the economic impact on small entities consistent with the stated objectives of applicable statutes. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)-(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this rule consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities. This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures as adjustments, as specified in Amendment 2, Amendment 3, and Amendment 5a to the 2006 Consolidated HMS FMP and the EA for the 2011 quota specifications rule. Thus, in this rulemaking, NMFS adjusted the base quotas established and analyzed in Amendment 2, Amendment 3, and Amendment 5a to the 2006 Consolidated HMS FMP by subtracting the underharvest or adding the overharvest as allowable, as specified and allowable in existing regulations. The adaptive management measures such as flexible opening dates for the fishing season and inseason adjustments to shark

trip limits implemented in this rule are within a range previously analyzed in the EA with the 2011 quota specifications rule. Under current regulations (§635.27(b)(2), all shark fisheries close on December 31 of each year and do not open until NMFS takes action, such as this rulemaking to re-open the fisheries. Thus, not implementing these management measures would negatively affect shark fishermen and related small entities such as dealers and would also not provide management the flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. NMFS has limited flexibility to exercise in carrying out the measures and quotas in this rule.

Based on the 2013 ex-vessel price, fully harvesting the unadjusted 2014 Atlantic shark commercial baseline quotas could result in total fleet revenues of \$4,892,722 (see Table 2). For the Gulf of Mexico blacktip shark management group, there would be a \$37,778 gain to the regional fleet in revenues due to underharvest in 2013. The non-blacknose SCS management group would also have a gain in revenue due to underharvest in 2013. There would be a \$44,165 gain to the Gulf of Mexico non-blacknose SCS management group, while the Atlantic non-blacknose SCS management group could see a \$171,109 gain in revenue. The adjustment due to the overharvests in 2013 would result in a \$13,900 loss to the regional fleet in revenues in the Gulf of Mexico aggregated LCS quota. The adjustment due to the overharvests in 2012 would result in a 5-year quota reduction for the blacknose shark management group. There would be a \$599 loss to the Gulf of Mexico blacknose shark management group, while there would a \$1,124 loss to the Atlantic blacknose shark management group. The adjustment due to the overharvests in 2012 and 2013 would result in a \$1,407 loss to the fleet in revenues in the porbeagle shark quota.

Table 2. Average ex-Vessel Prices per lb dw for Each Shark Management Group, 2013*.

Year	Species	Region	Price
2013	Aggregated LCS	Gulf of Mexico	\$0.47
		Atlantic	\$0.81
	Blacktip Shark	Gulf of Mexico	\$0.41
	Hammerhead Shark	Gulf of Mexico	\$0.32
		Atlantic	\$0.64
	LCS Research	Both	\$0.64
	Sandbar Research	Both	\$0.77
	Non-Blacknose SCS	Gulf of Mexico	\$0.32
		Atlantic	\$0.70
	Blacknose Shark	Gulf of Mexico	\$0.81
		Atlantic	\$0.83
	Blue shark	Both	\$0.28
	Porbeagle shark	Both	\$1.15**
	Other Pelagic sharks	Both	\$1.71
	Shark Fins	Gulf of Mexico	\$11.21
		Atlantic	\$3.63
		Both	\$7.42

*The ex-vessel prices are based on 2013 dealer reports through October 25, 2013.

**Since the porbeagle shark management group was closed for 2013, there was no 2013 price data. Thus, NMFS used price data from 2012.

All of these changes in gross revenues are similar to the changes in gross revenues analyzed in the 2006 Consolidated HMS FMP and its amendments. The FRFAs for those amendments concluded that the economic impacts on these small entities, resulting from rules such as this one that delay the season openings via proposed and final rulemaking, were expected to be minimal. The 2006 Consolidated HMS FMP and its amendments, and the EA for the 2011 quota specifications rule, assumed NMFS would be preparing annual rulemakings and considered the FRFAs in the economic and other analyses at the time.

For this final rule, NMFS reviewed the criteria at § 635.27(b)(3)(i) through (b)(3)(vii) to determine when opening each fishery will provide equitable opportunities for fishermen while

also considering the ecological needs of the different species. Over- and/or underharvests of 2013 and previous fishing season quotas were examined for the different species/complexes to determine the effects of the 2014 final quotas on fishermen across regional fishing areas. The potential season lengths and previous catch rates were examined to ensure that equitable fishing opportunities would be provided to fishermen. Lastly, NMFS examined the seasonal variation of the different species/complex and the effects on fishing opportunities. In addition to these criteria, NMFS also considered other relevant factors, such as public comments before arriving at the final opening dates for the 2014 Atlantic shark management groups. For the 2014 fishing season, NMFS is opening the fisheries for sandbar shark, Gulf of Mexico blacktip shark, Gulf of Mexico aggregated LCS, Gulf of Mexico hammerhead shark, non-blacknose shark SCS, blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups on January 1, 2014. The direct and indirect economic impacts will be neutral on a short- and long-term basis, because NMFS did not change the opening dates of these fisheries from the status quo.

NMFS is delaying the opening of the aggregated LCS and hammerhead shark management groups in the Atlantic region until June 1, 2014. This delay could result in short-term, direct, minor, adverse economic impacts as fishermen and dealers in the southern portion of the Atlantic region would not be able to fish for aggregated LCS and hammerhead sharks starting in January, but would still be able to fish earlier in the 2014 fishing season compared to the 2010 through 2012 fishing seasons, which did not start until July 15. Based on public comment, Atlantic fishermen in the southern portion of the region prefer a delayed opening for the potential to be fishing for aggregated LCS and hammerhead sharks from October through

December. Therefore, the delayed opening could have direct, minor, beneficial economic impacts for fishermen since there are limited opportunities for fishermen to fish for non-HMS in the southern portion of the Atlantic region later in the year. In the northern portion of the Atlantic region, a delayed opening for the aggregated LCS and hammerhead shark management groups would have direct, minor, beneficial economic impacts in the short-term for fishermen as they would have access to the aggregated LCS and hammerhead shark quotas in 2014. Overall, delaying the opening until June 1 would cause beneficial cumulative economic impacts across the region, since it would allow for a more equitable distribution of the quotas among constituents in this region. In addition, delaying the opening until June 1 would have minor, beneficial ecological impacts in the short-term for the Atlantic aggregated LCS and hammerhead management groups since it would reduce fishing pressure on these species in 2013. The economic impacts would be neutral on long-term basis, because this delayed opening would be for only the 2013 fishing season.

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.

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performing the functions and duties of the
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